

## SUBCHAPTER A—GENERAL

### PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

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### Subpart 2901.1—Regulation System

#### 2901.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Labor Acquisition Regulation, referred to as the DOLAR. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

#### 2901.101 Purpose.

(a) This subpart establishes chapter 29, the Department of Labor Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document as it must be used in conjunction with the FAR.

#### 2901.102 Authority.

The DOLAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of DOL Temporary Regulation Number 44, dated February 18, 1983, in accordance with section 1 of the Act of March 4, 1913 (29 U.S.C. 551, 37 Stat. 736), as amended; 5 U.S.C. 301, and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

#### 2901.103 Applicability.

The FAR and DOLAR apply to all DOL acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation.

#### 2901.103-70 Exclusions.

Certain DOL policies and procedures which might otherwise come within

the scope of this regulation may be excluded from the DOLAR where there is appropriate justification, such as:

(a) Subject matter that is procedural in nature and internal to the operation of the Department. These matters are contained in the Department of Labor Manual Series (DLMS).

(b) Instructional or training material that more fully explains matters covered in the FAR and DOLAR.

(c) Unless otherwise specifically stated, subject matter which deals with assistance programs where the award instruments are other than acquisition contracts. Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and Federal Governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations are codified separately at part 29–70 of title 41 of the Code of Federal Regulations.

#### **2901.104 Issuance.**

##### **2901.104–1 Publication and code arrangement.**

(a) The DOLAR and its subsequent changes are published when issued in daily issues of the FEDERAL REGISTER and in cumulative form in the Code of Federal Regulations.

(b) The DOLAR is issued as chapter 29 of title 48 of the Code of Federal Regulations.

##### **2901.104–2 Arrangement of regulations.**

(a) *General.* The DOLAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DOLAR part, subpart, etc.

(b) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 29 or a 290 such that there

will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.104–1 is shown as 2901.104–1 and DOLAR implementation of FAR subpart 24.1 is shown as subpart 2924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, DOL regulations governing appointment and termination of appointment of contracting officers' representatives is identified as 2901.603–70.

(c) *References and citations.* (1) This regulation may be referred to as the Department of Labor Acquisition Regulation or the DOLAR.

(2) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104–2(c)(2). References to DOLAR materials within the regulation will simply cite the identifying number, for example, 2901.104–2(c)(2).

#### **2901.104–3 Copies.**

Copies of the DOLAR published in the FEDERAL REGISTER or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference the DOLAR as chapter 29 of title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed, and revised as of October 1 of each year. Requests for the CFR version of the DOLAR should reference chapter 29 of title 48.

### **Subpart 2901.2—Administration**

#### **2901.201 Maintenance of the FAR.**

##### **2901.201–1 The Civilian Agency Acquisition Council.**

(a) The Department of Labor shall be represented on the Civilian Agency Acquisition Council by a staff member of the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, appointed for that purpose by the Director, Directorate of Procurement and Grant Management.

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(b) The Office of Procurement and Grant Policy will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

### Subpart 2901.3—Agency Acquisition Regulations

#### 2901.301 Policy.

(a) The Department of Labor Acquisition Regulation (DOLAR) System consists of policies, procedures and regulations which implement or supplement the FAR at specific levels within the Department of Labor. The Federal Acquisition Regulation (FAR) and the DOLAR System govern the contracting process and control contracting relationships between contractors and the Departments' agencies and offices.

(b) The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301, 29 U.S.C. 551, 40 U.S.C. 486(c), and other authority specifically stated, and is subject to the overall authority of the Administrator of General Services. See FAR 1.301(c)(3).

#### 2901.302 Limitations.

DOLAR System issuances are limited to:

(a) Published, codified, Department-wide regulations which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department;

(b) Published, codified, lower-level regulations of agencies and offices which contain additional policies and procedures that supplement the FAR to satisfy the specific and unique needs of the agency or office.

#### 2901.303 Codification and public participation.

(a) Published issuances under the DOLAR are codified under chapter 29 in title 48, Code of Federal Regulations and parallel the FAR in format, arrangement and numbering system.

(b) Regulations codified under chapter 29 are limited to those affecting private or public, profit or not for profit concerns, organizations or individuals desiring to enter into contracts with

the Department. Public participation procedures used in the promulgation of codified regulations under the DOLAR System will follow procedures of FAR subpart 1.5.

#### 2901.304 Agency control and compliance procedures.

(a) The DOLAR System is under the direct oversight and control of the Director, Directorate of Procurement and Grant Management. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in 2901.6.

(b) DOLAR System issuances shall comply with the restrictions in FAR 1.304(b) and the limitations in 2901.302. DOL Agencies and offices may implement or supplement the FAR or DOLAR with internal instructions not applicable DOL-wide. Additionally, they may request publication in the DOLAR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not duplicate higher-level coverage and shall be numbered in accordance with FAR 1.104-2 except that the numbers prescribed there and in 2901.104-2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Each DOL Agency and office shall establish, at the headquarters level, review and approval procedures for maintaining oversight and control of all DOLAR System issuances for their respective Agency or office. These procedures shall include methods to prevent unnecessary duplication of higher-level coverage; ensure consistency and uniformity among issuances; control the number of directives issued; update directives; and distribute copies.

(c) DOL Agencies and offices shall submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, Directorate of Procurement and Grant Management, for review in conjunction with the Solicitor prior to their publication. All issuances, whether or not published as a part of the DOLAR System, shall be submitted for review. In the case of internal procurement instructions, the purpose of the review is

to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued as the DOLAR.

#### **Subpart 2901.4—Deviations From the FAR and DOLAR**

##### **2901.403 Individual deviations.**

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions which affect only one contracting action.

(b) Requests for deviations under paragraph (a) of this section shall be submitted by the head of the contracting activity and include justification as to why the deviation is required.

(c) A copy of the approved deviation shall be included in the contract file.

##### **2901.404 Class deviations.**

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve class deviations of FAR or DOLAR provisions which affect more than one contracting action.

(b) Requests for deviations under paragraph (a) of this section, shall be submitted by the head of the contracting activity and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) A copy of each approved class deviation shall be referenced in the contract file.

(d) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, Directorate of Procurement and Grant Management, as required in FAR 1.404.

##### **2901.405 Deviations pertaining to treaties and executive agreements.**

(a) The Director, Directorate of Procurement and Grant Management, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405 (d) and (e).

#### **Subpart 2901.6—Contracting Authority and Responsibilities**

##### **2901.601 General.**

This subpart deals with contracting authority and responsibilities of the head of the agency as defined in 2901.1 and 2902.1, FAR subpart 1.6 and this subpart.

##### **2901.602 Contracting officers.**

##### **2901.602-1 Authority.**

Information on the limits of contracting officers' authority shall be maintained by the head of each contracting activity as required in FAR 1.601-1. The Directorate of Procurement and Grant Management shall also maintain this information.

##### **2901.603 Selection, appointment, and termination of appointment.**

##### **2901.603-1 General.**

(a) *First tier delegation.* The Assistant Secretary for Administration and Management (ASAM), acting through the Procurement Executive, is the chief departmental official for all acquisition and grant matters as outlined in Secretary's Order 4-76, for:

(1) Prescribing policies, procedures, and standards regarding the solicitation, award, and administration of all DOL acquisitions and grants for financial assistance (e.g., cooperative agreements, grants, and similar instruments) obligating Federal funds for the purpose of:

(i) Obtaining property and services for the DOL and/or third parties.

(ii) Promoting DOL programs and objectives through financial assistance.

(2) Acquiring property and services for the United States Government under Title I of the Federal Property and Administrative Services Act of 1949 (63 Stat. 379).

(3) Establishing reporting requirements necessary for effective departmental acquisitions and grant management and for complying with data needs promulgated by the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office

(GAO), and other agencies. This includes the SF-1099 report, "Income Other Than Wages," and "Federal Procurement Data System" (FPDS) and "Federal Assistance Award Data System" (FAADS) input.

(b) In the Department of Labor, contracting officer and grant officer authority and responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management (ASAM) to the following officials or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Deputy Under Secretary for Employment Standards.

(4) The Assistant Secretary for Mine Safety and Health.

(5) The Deputy Under Secretary for International Affairs.

(6) The Commissioner of Labor Statistics.

(7) The Inspector General.

(8) The Regional Administrators—OASAM.

(9) The Director, National Capital Service Center, OASAM.

(c) *Delegations and limitations.* Subject to the limitations set forth in this paragraph and paragraph (g), the officials designated in paragraph (b) possess full authority to obligate the U.S. Government through the use of contracts, agreements, orders, grants, and/or other similar instruments. This authority includes obligating Federal funds for the purpose of obtaining property and services for the government and/or third parties, or for the purpose of promoting DOL programs or objectives through financial assistance. Each official designated in paragraph (b) (except the Inspector General), is delegated authority and responsibility for issuing purchase orders for purchases under GSA Federal Supply Schedules, FEDSTRIP, and from open-market sources not to exceed the small purchases limitation. Acquisition of typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. Acquisitions of copier equipment re-

quire prior approval of the Directorate of Administrative Services and Safety and Health Programs. Paragraph (g)(2) outlines limitations on the purchase, lease and renewal of lease(s) of ADP equipment, software and services. Approval authority for competitive acquisition of consulting and related services costing less than \$50,000 cannot be redelegated by the head of the contracting activity. Other delegations in this section may be further redelegated by the designated officials within their areas of assigned responsibility, except that small purchase authority delegated to the Assistant Secretary for Employment and Training, the Assistant Secretary for Occupational Safety and Health, the Deputy Under Secretary for Employment Standards, and the Commissioner of Labor Statistics is limited to the National Office only and may not be redelegated to the Regional Offices. Before issuing redelegations, contracting officers should consider the following factors to determine the extent to which authority shall be redelegated:

Volume of contracting programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller contracting programs and offices on a geographical basis; and the overall strengthening of the acquisition process by the selection of qualified personnel. Criteria for selection, appointment and termination of Contracting/Grant Officers are contained in the Department of Labor Manual Series (DLMS-2) Chapter 800. Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. An information copy of every further redelegation must be furnished to the OASAM, Directorate of Procurement and Grant Management.

(d) *Responsibilities.* The following redelegations are made subject to the requirements and exceptions outlined in paragraph (g) regarding prior approval requirements and the limitations on authority to issue purchase orders and contracts for the purchase, lease and

renewal of lease(s) for ADP equipment, software and services; and acquisition of consulting and related services.

(1) The Assistant Secretary for Employment and Training, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training.

(ii) Approval of all grantee acquisitions of ADP equipment, software and services using grants-in-aid to State and local governments.

(iii) Establishing and maintaining an imprest fund.

(2) The Assistant Secretary for Occupational Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Issuance of grant agreements with States as required under the statutory and regulatory requirements imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursements to States, pursuant to section 7(c)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) (29 U.S.C. 656(c)(1)) for State services, facilities, and personnel used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to section 21(b) of the OSH Act of 1970 (29 U.S.C. 670(b)) for short term training of personnel.

(iv) Issuance of grants to nonprofit organizations for implementation of the expanded Employer-Employee Training Program under section 21(c) of the OSH Act of 1970 (29 U.S.C. 670(c)).

(3) The Deputy Under Secretary for Employment Standards, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Entering into agreements with States to enhance Federal/State cooperative efforts for the administration of comparable employment standards programs.

(ii) Procuring medical services necessary for the adjudication of claims for injury and occupational disease filed by Federal employees in accordance with the Federal Employees Com-

pensation Act (5 U.S.C. 8101, *et seq.*) and the Federal Coal Mine Health and Safety Act of 1969, as amended (Pub. L. 91-173, 83 Stat. 742).

(4) The Assistant Secretary for Mine Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Mine Safety and Health.

(ii) Issuing grants as required by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment, software and services costing \$100,000 or less without prior approval of the Directorate of Information Resources Management (DIRM), OASAM. Requirements shall not be fragmented in order to circumvent this \$100,000 threshold. ADP equipment, software or services costing more than \$100,000 require prior approval of DIRM. Prior approval of DIRM for ADP equipment, software, or services costing less than \$100,000 is also required when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104.

(5) The Deputy Under Secretary for International Affairs, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supplies and services required in support of training and orientation of foreign nationals.

(ii) Acquisition of supplies and services required in support of overseas exhibitions required under statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(iii) International responsibilities not funded by an annual appropriation.

(6) The Commissioner of Labor Statistics, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supporting statistical economic research services, required under the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Selling special statistics developed by the Bureau of Labor Statistics

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in accordance with the Act of April 13, 1934 (29 U.S.C. 9 *et seq.*).

(7) The Inspector General, or an officer acting in that capacity, is delegated authority and responsibility for contracting with State and local agencies for audit services in accordance with section 4 of the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 503).

(8) The Regional Administrators—OASAM, or officers acting in that capacity, are delegated authority and responsibility within their respective regions, for:

(i) The acquisition of property and services required for the Regional Offices, including all imprest fund purchases, GSA Federal Supply Schedule purchases, and open-market purchases. The acquisition of records equipment when the cost does not exceed the small purchases limitation for a single system. Purchases for typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. The purchase of copier equipment requires prior approval of the Directorate of Administrative Services and Safety and Health Programs.

(ii) Contracting for ADP operational services to support regional remote job entry capabilities. This authority does not include the purchase, lease, or renewal of lease(s) for ADP equipment or software. Prior approval of ADP operational services is required from DIT whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(9) The Director, National Capital Service Center, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA)) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of

Information Resources Management (DIRM), OASAM, as appropriate.

(e) *Compliance responsibilities.* Each official designated in paragraph (b) is responsible for:

(1) Complying with the policies, procedures and reporting requirements established by the ASAM.

(2) Complying with the policies, procedures and other requirements prescribed by OMB, GSA, and other central agencies, and such implementing instructions as the Department may issue. This specifically includes competition for services and products within the small purchases limitation and restrictions on the use of consultant contracts, audiovisual productions, etc.

(3) Within the limitations specified in this subpart, obtaining all property and services required to fulfill the statutory and regulatory responsibilities of the Agency or Office.

(f) *Policy responsibilities.* The following officials have acquisition policy responsibilities within the DOL:

(1) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is responsible for:

(i) Developing and publishing guidelines, policies, and regulations for DOL acquisition and grant operations.

(ii) Reviewing and evaluating administrative procedures for DOL acquisition and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers with acquisition and grant responsibilities. This includes interpreting the Federal Acquisition Regulations and the Department of Labor Acquisition Regulations and obtaining legal advice and assistance from the Solicitor of Labor as required.

(iv) Providing continuous coordination with appropriate DOL and Federal Agencies to ensure compliance with procurement and grant regulations.

(v) Providing technical advice and support to the ASAM in complying with the reporting requirements outlined in paragraph (a)(3).

(2) The Director, Directorate of Information Resources Management (DIRM), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing \$100,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased) and for all ADP services. Requirements shall not be fragmented in order to circumvent this \$100,000 threshold. Reviews involving lower amounts will be made when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104.

(ii) Providing oversight, including periodic system reviews, to promote efficient and effective management of information technology resources.

(iii) Reviewing ADP procurement requests for compliance with procurement policies, standards, and regulations.

(iv) Representing DOL and agencies in DOL in liaison with GSA and OMB on ADP matters.

(v) Developing and publishing policies and guidelines for managing information technology resources.

(3) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for:

(i) Assuring participation of the Department in the Federal Small and Disadvantaged Business Program as specified in section 8(a) (small disadvantaged business set-asides) and section 15 (procurement in labor surplus areas) of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Orders 11625 (Minority Business Enterprises) and 12138 (Women-Owned Business Enterprises).

(ii) Assuring participation and input of each Program Agency in establishing DOL goals for increased opportunities for small and disadvantaged business concerns to participate in the Department's procurement and grant activities.

(iii) Providing technical advice and assistance to Program Agencies in establishing Agency goals for utilizing small and disadvantaged businesses.

(iv) Developing systematic procedures, guidelines and regulations for assuring the effective implementation of the provisions of the Small Business

Act, as amended, and Executive Orders 11625 and 12138.

(v) Maintaining liaison with the Small Business Administration (SBA) on matters regarding sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Order 12138, and the Department of Commerce on matters relating to Executive Order 11625.

(4) The Director, Office of Information and Public Affairs (OIPA), is responsible for:

(i) Reviewing all purchase orders, requisitions and contracts for audiovisual productions including those which contain an audiovisual component along with other activities before the request is processed and approved by OASAM or another Agency to assure compliance with DOL and OMB requirements. All types of audiovisual productions are covered, including projects for training, education, internal communications, and/or public information purchases. Training and education products will not be reviewed for content but rather for the professional quality, effectiveness and cost of the communications material being produced. (See Guidelines for Management of Departmental Audiovisual Activities, issued pursuant to OMB Circular A-114 and Secretary's Order 5-79.)

(ii) Reviewing all purchase orders, requisitions, and contracts for the rental or purchase of major audiovisual equipment to be used in production work before the request is processed and approved by OASAM or another DOL Agency to assure compliance with DOL and OMB requirements. Production equipment includes motion picture and videotape cameras, editing equipment and duplication equipment for videotape and film. Review is not necessary for such equipment as still cameras, projectors and tape players, cassette tape players, *etc.*

(5) The Procurement Review Board is responsible for:

(i) Reviewing all requests to award contracts, grants, agreements, or modifications thereto (as described in this paragraph (f)(5)) and recommending approval or disapproval to the ASAM:

(A) Requests for noncompetitive procurements, discretionary grants and



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agreements exceeding the small purchases limitation;

(B) Noncompetitive consulting and related services requests, including purchase orders, and personnel appointments of consultants and experts;

(C) Competitive procurements for consulting and related services costing \$50,000 or more and modifications thereto as described in paragraph (g) of this section;

(D) Major procurements and those with high waste vulnerability; and

(E) Requests for noncompetitive research, evaluation and demonstration projects after prior review by the Assistant Secretary for Policy.

(ii) Assuring compliance with the scope of the Board's authority, with OMB and DOL guidelines for use of consulting and related services and other special acquisitions.

(iii) Approval by the ASAM of requests identified in this paragraph (f)(5) do not constitute award of a contract. The contracting officer has final approval authority.

(g) *Exceptions to delegations of authority.* The assignment of procurement responsibilities described in paragraph (b) are subject to the exclusions listed below:

(1) *Procurement of consulting and related services.* (i) The ASAM retains authority and responsibility for approval of requests for consulting and related services for individuals and organizations under the following circumstances:

(A) When acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, or for those competitive actions costing \$50,000 or more; and

(B) When modifications involving changes in dollar amounts, deliverables under contracts or (under rare circumstances) extensions to existing consulting and related services contracts are required.

(ii) The heads of the contracting activities retain approval authority for the acquisition of consulting and related services costing less than \$50,000 which are obtained through competitive procedures.

(2) *Automated data processing (ADP).* The following requirements and limita-

tions exist for the purchase or lease of ADP equipment, software and services:

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) with procurement responsibility explicitly including this authority.

(ii) Acquisition of ADP equipment, software and services costing \$100,000 or more requires prior approval of DIRM, OASAM.

(iii) Acquisition of ADP equipment, software and services costing less than \$100,000 do not require prior approval of DIRM, OASAM, unless costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104. However, agencies are responsible for complying with FIRMR documentation requirements.

(3) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders, jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101-11.306 as implemented by the Department of Labor Manual Series (DLMS-1) requires that: Form DL 1-194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer, DIRM, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B-120 and B-122 which discourage the use of legal-size files, no new legal size records equipment is to be purchased.

(4) The OSDBU will periodically monitor DOL Agency acquisition and grant functions which relate to the preferential programs to determine their effectiveness and adherence to Federal and DOL requirements.

(5) The Assistant Inspector General for Audit will periodically audit Agency acquisition and grant functions to determine compliance with governing regulations, policies and procedures.

(h) *Rescission of authority.* The ASAM acting through the Director, Directorate of Procurement and Grant Management, reserves the right to rescind the acquisition and grant authority

delegated herein if it is determined that such action is in the best interest of the Government.

[50 FR 8914, Mar. 5, 1985, as amended at 51 FR 40372, Nov. 6, 1986]

**2901.603-70 Modification of appointment.**

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

**2901.603-71 Ratification of unauthorized contract awards.**

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act of 1949, other Federal laws, the FAR, the DOLAR, and good acquisition practice; *e.g.*, certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, *etc.*

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; *e.g.*, there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending estab-

lishment of valid contractual coverage. The Head of the Contracting Activity (HCA) shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the Director, Directorate of Procurement and Grant Management, shall be notified by the HCA in accordance with the procedures outlined in paragraph (c) of this section.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Director, Directorate of Procurement and Grant Management, may waive the requirement that the responsible employee initiate and document the request; *Provided* the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive acquisition, and the information required by paragraph (c)(1) of this section, must be forwarded to the HCA for concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Director, Directorate of Procurement and Grant Management, for review by the Procurement Review Board (PRB).

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The PRB will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with paragraph (c)(2) of this section. Based upon this review and advice from the Office of the Solicitor, the PRB will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring HCA without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the PRB may ratify the action, with the concurrence of the Assistant Secretary for Administration and Management, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(iii) A detailed record of the review shall be maintained for audit purposes.

### **2901.603-72 Responsibility of other Government personnel.**

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their acquisition activity to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accom-

plish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed, and met;

(4) Performance or delivery is timely;

(5) Files are documented to substantiate the judgments, decisions, and actions taken.

### **2901.603-73 Contracting officer's representatives.**

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to a contracting office and performing primary duties in a position within a contracting office, and under the supervision of a contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform, under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such as employee, acting as a representative for the contracting officer, to sign any contractual documents or letter in those instances where the signature of a contracting officer is required.

**2901.603-74 Legal review and assistance.**

Proposed acquisitions may be subject to legal review by the Office of the Solicitor of Labor. Internal DOL procedures are contained in the Department of Labor Manual Series (DLMS-2, Chapter 900, Section 910). Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[51 FR 40373, Nov. 6, 1986]

## **PART 2902—DEFINITIONS OF WORDS AND TERMS**

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### **Subpart 2902.1—Definitions**

#### **2902.101 Definitions.**

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion of a part:

*Contracting activity* means an agency or office within the Department with delegated procurement authority to manage contracting functions associated with its mission. Within the Office of the Assistant Secretary for Administration and Management, the National Capital Service Center is the contracting activity.

*Head of procuring activity* means the Assistant Secretary for Administration and Management; the Assistant Secretary for Employment and Training; the Assistant Secretary for Mine Safety and Health, and the Director, National Capital Service Center.

*Head of the agency* (also called *agency head*) means the Assistant Secretary for Administration and Management.

*Head of the contracting activity (HCA)* means the Assistant Secretary for Administration and Management; the Director, National Capital Service Cen-

ter, and the head of each DOL Agency and Office listed in 2901.603-1(b) who has overall responsibility for managing the contracting activity.

*Procurement Executive* means the Director, Directorate of Procurement and Grant Management, and is synonymous with the term *Senior Procurement Executive* defined at FAR subpart 2.1. Responsibilities of the Procurement Executive include appointing the DOL advocate for competition.

*Procuring activity* means the Office of the Assistant Secretary for Administration and Management; the Employment and Training Administration; the Mine Safety and Health Administration; and the National Capital Service Center.

[50 FR 8921, Mar. 5, 1985, as amended at 51 FR 40373, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

## **PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

### **Subpart 2903.1—Safeguards**

Sec.

2903.101 Standards of conduct.

2903.101-3 Agency regulations.

#### **Subpart 2903.2—Contractor Gratuities to Government Personnel**

2903.203 Reporting suspected violations of the gratuities clause.

2903.204 Treatment of violations.

#### **Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations**

2903.302 Reporting identical bids.

2903.302-2 Reporting requirements.

#### **Subpart 2903.4—Contingent Fees**

2903.409 Misrepresentation or violation of the Covenant against Contingent Fees.

#### **Subpart 2903.5—Other Improper Business Practices**

2903.502 Subcontractor kickbacks.

#### **Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

2903.602 Exceptions.

2903.603 Responsibilities of the contracting officer.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).